

EPA – Proposed Waters of the US Rule



**AGRICULTURE AND FORESTRY
AWARENESS STUDY COMMISSION**



Topics



- Proposed Rule Summary
- Interpretive Rule – NRCS Practices
- NCDA&CS plans

Why Rulemaking?



- Court cases have caused confusion
- Reliance on guidance documents
- More predictability and consistency
- Public process

Proposed Rule Summary



Jurisdictional Waters:

- Traditional Navigable Waters
- Interstate Waters
- Territorial Seas
- Impoundments
- Tributaries
- Adjacent Waters (wetlands)
- Other Waters

Definitions



- **Tributary:**

means a water physically characterized by the presence of a bed and banks and ordinary high water mark as defined at 33 CFR 328.3(e), which contributes flow, either directly or through another water, to a water identified in paragraphs (a)(1) through (4) of this section. In addition, wetlands, lakes, and ponds are tributaries (even if they lack a bed and banks or ordinary high water mark) if they contribute flow, either directly or through another water to a water identified in paragraphs (a)(1) through (3) of this section. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more man-made breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands at the head of or along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as the bed and banks and an ordinary high water mark can be identified upstream of the break. **A tributary, including wetlands, can be natural, man-altered, or man-made water and includes waters such as rivers, streams, lakes, ponds, impoundments, canals, and ditches not excluded in paragraphs (b)(3) or (4) of this section.**

Definitions



Tributary

- Means a water physically characterized by the presence of a bed and banks and ordinary high water mark
- A tributary, including wetlands, can be natural, man-altered, or man-made water and includes waters such as rivers, streams, lakes, ponds, impoundments, canals, and ditches not excluded in paragraphs (b)(3) or (4) of this section.

Definitions



Jurisdictional Ditches

- Altered natural streams
- Ditches excavated in wetlands
- Ditches with perennial flow
- Ditches that connect two waters



Definitions



Excluded Ditches

- Ditches that are excavated wholly in uplands, drain only uplands, and have less than perennial flow (all 3 criteria).
- Ditches that do not contribute flow, either directly or through another water, to a navigable water, interstate water, territorial seas, or impoundment

Definitions



Adjacent Waters

- Wetlands, ponds, lakes, and similar water bodies that provide similar functions which have a significant nexus to traditional navigable waters, interstate waters, or the territorial seas.
- Shallow groundwater connection can qualify

Definitions



Other Waters

- Evaluated on a case-by-case basis
- Could cover a small percentage of “isolated wetlands”

Agriculture Issues



Traditional Agriculture Exemptions Maintained

- Normal farming, silvicultural, and ranching practices
- Prior converted cropland
- Agricultural stormwater
- Return flows from irrigated agriculture

Public Comment



- Published in FR on April 21
- 90 day comment period
- Comments due July 21

- NCDA&CS is reviewing
- Working with other groups

Interpretive Rule



- MOU between EPA, USACE, and USDA
- 56 activities are now considered to be “normal farming” and are exempt from CWA 404 permitting
 - Must be an established farming operation
 - Practices must meet NRCS Standards
 - NRCS does not have to design or approve practices
 - Notification/permission not required – practices automatically exempt if NRCS Standards are met
- List to be revisited annually
- Existing agricultural exemptions still apply

Interpretive Rule



- Interpretive Rule = Guidance Document
- Can be revised without notice or comment period
 - Practices can be added or removed as Standards are updated
- Compliance determined by EPA and USACE
- Comments on this version due June 15

Thank You!



Questions?

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